

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2751

Introduced by ~~Committee on Labor and Employment (Roger Hernández (Chair), Alejo, Chau, Gomez, and Holden)~~ Assembly Member Roger Hernández

March 13, 2014

An act to amend Section 1019 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, as amended, ~~Committee on Labor and Employment~~ Roger Hernández. Retaliation: unfair immigration-related practices: suspension of business licenses.

Existing law prohibits an employer or any other person from engaging in, or directing another person to engage in, an unfair immigration-related practice, ~~as defined~~, against a person for the purpose of, or with the intent of, retaliating against any person for exercising a right protected under state labor and employment laws or under a local ordinance applicable to employees, as specified. *Existing law defines unfair immigration-related practice to include, among other things, threatening to file or filing a false police report.* Existing law creates a rebuttable presumption that an adverse action taken within 90 days of the exercising of a protected right is committed for the purpose of, or with the intent of, retaliation. Existing law authorizes a civil action *for equitable relief and damages or penalties, as specified*, by an employee or other person who is the subject of an unfair immigration-related practice. Existing law also authorizes a court to order the appropriate government agencies to suspend certain business

licenses held by the violating party for prescribed periods based on the number of violations, and requires the court to consider specified circumstances in determining whether a suspension of all licenses is appropriate.

This bill would include in the definition of unfair immigration-related practice the threatening to file or the filing of a false report or complaint with any state or federal agency. The bill would authorize a civil action for equitable relief and any applicable damages or penalties by an employee or other person who is the subject of an unfair immigration-related practice. The bill would further authorize a court to order, upon application by a party or on its own motion, the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations.

This bill would *also* make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1019 of the Labor Code is amended to
- 2 read:
- 3 1019. (a) It shall be unlawful for an employer or any other
- 4 person or entity to engage in, or to direct another person or entity
- 5 to engage in, unfair immigration-related practices against any
- 6 person for the purpose of, or with the intent of, retaliating against
- 7 any person for exercising any right protected under this code or
- 8 by any local ordinance applicable to employees. Exercising a right
- 9 protected by this code or local ordinance includes the following:
- 10 (1) Filing a complaint or informing any person of an employer's
- 11 or other party's alleged violation of this code or local ordinance,
- 12 so long as the complaint or disclosure is made in good faith.
- 13 (2) Seeking information regarding whether an employer or other
- 14 party is in compliance with this code or local ordinance.
- 15 (3) Informing a person of his or her potential rights and remedies
- 16 under this code or local ordinance, and assisting him or her in
- 17 asserting those rights.

1 (b) (1) As used in this chapter, “unfair immigration-related
2 practice” means any of the following practices, when undertaken
3 for the retaliatory purposes prohibited by subdivision (a):

4 (A) Requesting more or different documents than are required
5 under Section 1324a(b) of Title 8 of the United States Code, or a
6 refusal to honor documents tendered pursuant to that section that
7 on their face reasonably appear to be genuine.

8 (B) Using the federal E-Verify system to check the employment
9 authorization status of a person at a time or in a manner not
10 required under Section 1324a(b) of Title 8 of the United States
11 Code, or not authorized under any memorandum of understanding
12 governing the use of the federal E-Verify system.

13 (C) Threatening to file or the filing of a false police report, *or*
14 *a false report or complaint with any state or federal agency.*

15 (D) Threatening to contact or contacting immigration authorities.

16 (2) “Unfair immigration-related practice” does not include
17 conduct undertaken at the express and specific direction or request
18 of the federal government.

19 (c) Engaging in an unfair immigration-related practice against
20 a person within 90 days of the person’s exercise of rights protected
21 under this code or local ordinance applicable to employees shall
22 raise a rebuttable presumption of having done so in retaliation for
23 the exercise of those rights.

24 (d) (1) An employee or other person who is the subject of an
25 unfair immigration-related practice prohibited by this section, or
26 a representative of that employee or person, may bring a civil
27 action for equitable relief and any *applicable* damages or penalties;
28 ~~in accordance with this section.~~

29 (2) Upon a finding by a court of applicable jurisdiction of a
30 violation this section, *upon application by a party or on its own*
31 *motion, a court may do the following:*

32 (A) For a first violation, ~~the court in its discretion, may order~~
33 ~~the appropriate government agencies to suspend all licenses subject~~
34 ~~to this chapter that are held by the violating party for a period of~~
35 ~~up to 14 days. For the purposes of this paragraph, the licenses that~~
36 ~~are subject to suspension are all licenses held by the violating party~~
37 ~~specific to the business location or locations where the unfair~~
38 ~~immigration-related practice occurred. In determining whether a~~
39 ~~suspension of all licenses is appropriate, the court shall consider~~
40 ~~whether the employer knowingly committed an unfair immigration~~

1 practice, the good faith efforts of the employer to resolve any
2 alleged unfair immigration related practice after receiving notice
3 of the violations, as well as the harm other employees of the
4 employer, or employees of other employers on a multiemployer
5 job site, will suffer as a result of the suspension of all licenses. On
6 receipt of the court's order and notwithstanding any other law, the
7 appropriate agencies shall suspend the licenses according to the
8 court's order.

9 (B) For a second violation, ~~the court, in its discretion, may~~ order
10 the appropriate government agencies to suspend all licenses that
11 are held by the violating party ~~specific to the business location or~~
12 ~~locations where the unfair immigration-related practice occurred,~~
13 for a period of up to 30 days. ~~In determining whether a suspension~~
14 ~~of all licenses is appropriate, the court shall consider whether the~~
15 ~~employer knowingly committed an unfair immigration practice,~~
16 ~~the good faith efforts of the employer to resolve any alleged unfair~~
17 ~~immigration related practice after receiving notice of the violations,~~
18 ~~as well as the harm other employees of the employer, or employees~~
19 ~~of other employers on a multiemployer job site, will suffer as a~~
20 ~~result of the suspension of all licenses.~~ On receipt of the court's
21 order and notwithstanding any other law, the appropriate agencies
22 shall immediately suspend the licenses.

23 (C) For a third or subsequent violation, ~~the court, in its~~
24 ~~discretion, may~~ order the appropriate government agencies to
25 suspend for a period of up to 90 days all licenses that are held by
26 the violating party ~~specific to the business location or locations~~
27 ~~where the unfair immigration-related practice occurred. In~~
28 ~~determining whether a suspension of all licenses is appropriate,~~
29 ~~the court shall consider whether the employer knowingly~~
30 ~~committed an unfair immigration practice, the good faith efforts~~
31 ~~of the employer to resolve any alleged unfair immigration-related~~
32 ~~practice after receiving notice of the violations, as well as the harm~~
33 ~~other employees of the employer, or employees of other employers~~
34 ~~on a multiemployer job site, will suffer as a result of the suspension~~
35 ~~of all licenses.~~ On receipt of the court's order and notwithstanding
36 any other law, the appropriate agencies shall immediately suspend
37 the licenses.

38 (3) *In determining whether a suspension of all licenses is*
39 *appropriate under this subdivision, the court shall consider*
40 *whether the employer knowingly committed an unfair*

1 *immigration-related practice, the good faith efforts of the employer*
2 *to resolve any alleged unfair immigration-related practice after*
3 *receiving notice of the violations, as well as the harm other*
4 *employees of the employer, or employees of other employers on a*
5 *multiemployer job site, will suffer as a result of the suspension of*
6 *all licenses.*

7 ~~(3)~~

8 (4) An employee or other person who is the subject of an unfair
9 ~~immigration document~~ *immigration-related* practice prohibited
10 by this section, and who prevails in an action authorized by this
11 section, shall recover ~~its~~ *his or her* reasonable attorney's fees and
12 costs, including any expert witness costs.

13 (e) As used in this chapter:

14 (1) "License" means any agency permit, certificate, approval,
15 registration, or charter that is required by law and that is issued by
16 any agency for the purposes of operating a business in this state
17 *and that is specific to the business location or locations where the*
18 *unfair immigration-related practice occurred.* "License" does not
19 include a professional license.

20 (2) "Violation" means each incident when an unfair ~~immigration~~
21 *immigration-related* practice was committed, without reference
22 to the number of employees involved in the incident.